IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 17 OF 2003.

Shri Sushant R. Bandekar,
r/o Arun Niwas, Dattwadi,
Mapusa. ... Applicant.

Versus

1. Smt. Snehal Sunil Nanodkar,
   r/o 11/C Patto Colony,
   Government Quarters,
   Panaji.
2. State rep. by Public
   Prosecutor. ... Respondents.

Mr. J.P. Mulgaonkar, Advocate for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent No. 2/State.

Coram : P.V. HARDAS, J.

Date : 18th July 2003.

ORAL JUDGMENT.

The applicant/accused has filed this Criminal Revision Application challenging his conviction for an offence punishable under Section 138 of the Negotiable Instruments Act and sentence of simple imprisonment of 15 days and fine of Rs. 1,000/- in default simple imprisonment of 7 days, passed by the Judicial Magistrate, First Class, Mapusa, by Judgment, dated 26th November 1996, in Criminal Case No. 2/1994/C and confirmed by the learned Additional Sessions Judge, Mapusa, by Judgment, dated 27th January 2003, in Criminal Appeal No. 18 of 1997.

2. The facts in brief as are necessary for the

decision of this revision are set out hereunder:-

The respondent no. 1 herein, who has chosen to remain absent, despite being served, filed Criminal Case No. 2/1994/C, in the Court of the Judicial Magistrate, First Class, Mapusa, against the present applicant, for an offence punishable under Section 138 of the Negotiable Instruments Act, on the ground that the cheque, dated 31st October 1993, for Rs. 50,000/-, issued by the applicant/accused in favour of the respondent no. 1/complainant, was dishonoured on account of insufficient funds in the account of the accused. The respondent no. 1/complainant had issued a notice, dated 28th January 1994 and the applicant/accused, despite receipt of the notice, had failed to pay the aforesaid amount to the respondent no. 1/complainant. On consideration of the evidence, the learned trial Court found that the offence as against the applicant/accused was proved and, accordingly, convicted and sentenced the accused as aforestated. The applicant/accused being aggrieved by his conviction and sentence, filed Criminal Appeal No. 18 of 1997 and the learned Additional Sessions Judge, Mapusa, dismissed the appeal maintaining the conviction and sentence. Hence, the present revision.

3. Mr. Mulgaonkar, the learned counsel appearing

on behalf of the applicant/accused, has stated that an application for compounding the offence had been filed before the learned lower appellate Court as the complainant had received the entire amount for which the cheque was drawn. The said application was signed by the accused as well as the complainant. The learned lower appellate Court, by its Order, dated 16th December 2002, dismissed the said application for permission to compound, and rightly so, on the ground that the offence under Section 138 of the Negotiable Instruments Act could not be compounded as it was not made compoundable as per Section 320 of the Code of Criminal Procedure.

4. Mr. Mulgaonkar, the learned counsel for the applicant, has submitted that in these peculiar facts and circumstances of the case, particularly when the complainant has received the entire amount for which the cheque was drawn and had made attempts to compound the offence before the learned lower appellate Court, the substantive sentence of 15 days of simple imprisonment passed against the accused be set aside. It is true that the payment of the entire amount of the cheque would be a mitigating circumstance as far as the substantive sentence passed. In the present matter, admittedly, an application for compounding was moved by the complainant as well as by the accused. The complainant, despite service, has chosen not to appear

in this Court. Therefore, according to me, this is a fit case for quashing the substantive sentence of imprisonment passed against the applicant/accused.

5. In the result, therefore, this Criminal Revision Application is partly allowed. The substantive sentence of simple imprisonment of 15 days is, hereby, quashed and set aside and the sentence of fine of Rs. 1,000/- is maintained.

(P.V. HARDAS)
JUDGE.

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